IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2253 OF 2005

Prakash Balkrishna Pujari, .. Petitioner.
Age about 32 yrs., R/a CGS
Quarters, 8/48, 2nd Floor,
Ghatkopar (W), Mumbai -400 086
at present detained at Thane
Central Prison, Thane.

V/s.

1. The Commissioner of Police,
   Greater Mumbai, Mumbai.

2. The State of Maharashtra

3. The Superintendent, Thane
   Central Prison, Thane

4. The Superintendent, Nashik Rd.,
   Central Prison, Nashik .. Respondents.

Mr.Nitin Sejpal and Ms.Pooja Bhojne for the Petitioner.

Mr. D.S. Mhaispurkar, APP for the State.

CORAM : D. G. DESHPANDE
S. A. BOBDE, JJ.

DATED : 27TH JUNE, 2006.

ORAL JUDGMENT .: (Per Bobde,J.)

1. By this petition, the petitioner has challenged his detention under section 3 of the MPDA Act, 1981. The detention order was passed with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The detention order has

been made by the respondent while the petitioner was in custody since April, 2005 for the offences registered as C.R. Nos. 45/2005 and 113/2005 under sections 399, 402 of IPC read with sections 3, 25 of the Arms Act respectively. He is accused with bank robbery and dacoity committed in respect of the bank's money looted from its car in separate incidents.

2. The grounds of detention mainly refer to the aforesaid two separate incidents of bank robbery and robbery of Bank's car - vide ground 5 of the detention order. The respondent - Commissioner of Police, has in paragraph 7 of the detention order referred to the aforesaid activities and has stated that though he is aware that the petitioner has not been granted bail in the aforesaid C.R. Nos. 45/05 and 113/05; however he "may be granted bail in the said cases in due course under normal law of the land". It is this observation of the Commissioner which has given rise to the main contention in this case.

3. The main contention on behalf of the petitioner is that the observation of the detaining authority that the petitioner needs to be detained even though he is already in custody, is based on a misapprehension that he might be released on bail. According to the learned

counsel for the petitioner the nature of the incident and the offences for which the petitioner has been charged indicate that there is no chance of the petitioner being released on bail. In any case, according to the petitioner there is no imminent possibility of his coming out on bail and there is nothing on record to show that he has made any preparation for filing a bail application or actually filed any bail application.

4. The Respondent, Commissioner of Police, has met this ground in paragraph 21 of the affidavit in reply, in which he has stated that he has decided to detain the petitioner since he was satisfied that the detenu would apply and may get bail under the normal law of the land. He has further stated that he was satisfied that the petitioner would apply for bail and after becoming a free person, would indulge in similar prejudicial activities. The respondent commissioner has also referred to possibility of the petitioner being released on bail on medical grounds. Thus the question that falls for our consideration in this case is whether the petitioner’s detention is vitiated because of the main ground that the petitioner might be released on bail and might indulge in activities which are prejudicial to the maintenance of public order, is baseless.

5. It is settled law that a person in custody may be validly detained under a law providing for preventive detention. The circumstances for such a detention were succinctly set out by the Supreme Court in **Suganchand Kanhaiyyalal Chelawant vs. Union of India & Ors.,** reported in 1990 Supreme Court Cases (Cri) 249. In paragraph 21 the Supreme Court observed as follows :-

> "21. The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in

> the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

6. The present detention order may be examined in the light of the above observations. In other words, it is necessary to see if there are any compelling reasons and cogent material before the detenu authority from which it may be inferred that the detenu is likely to be released from custody in the near future and that he would thereupon indulged in prejudicial activities.

7. Having heard the learned counsel at length and having perused the record, we are of the opinion that the circumstances of the case do not justify the petitioner's detention on the ground that he is likely to be released from custody in the near future. It appears from the nature of the offence with which the petitioner is charged in the aforesaid C.Rs'. namely, bank robbery, extortion etc., that the petitioner did not even move an application for bail. There is no evidence whatsoever of the petitioner's having prepared

a bail application or much less having filed it. It is, therefore, difficult to accept the respondent's case that this was a case where the detenu would apply for and get bail under the normal law of the land. In **Venkatachaariar Chaturvedi vs. State through Secretary & Anr.,** reported in **(2006) 1 Supreme Court Cases (Cri) 593;** in a similar situation, the Supreme Court rejected the contention of the detaining authority and took the view that there was nothing on record to show that there was an imminent possibility of the detenu coming out on bail. The Supreme Court in para- 14 observed as follows:-

> "14. We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which

> the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13-12-2005."

7. In the present case we are satisfied from the available material on record that the apprehension expressed in the detention order and supported in the affidavit in reply cannot sustain the detention.

8. In **Junaid Abdur Rashid Shaikh vs. M.N.Singh & Ors.,** reported in 2002 ALL MR (Cri) 394, this court observed that because a co-detenu was actually granted bail from the Sessions Court after the detaining authority had issued the impugned detention order, does not mean that there was cogent material to come to the conclusion that the detenu was likely to be released on bail in the near future. This court held that the

validity of the contentions must be ascertained from the circumstances existing at the time the detention order was passed. Similarly this court in **Amit Rakesh Janbandhu vs. State of Maharashtra,** reported in 2002 Bom. C.R.(Cri.)561, quashed the detention order made in similar circumstances on the ground that the detenu was already in custody and had not moved any application for bail and there was no possibility of his coming out and engaging in dangerous activities.

9. The learned counsel for the respondent, however, relied on a decision of the division bench of this court in **Shri Sayyed Akbar Ali @ Jugnu Sayyed Hasim Ali vs. Shri A.N. Roy, Commissioner of Police, and others, in Criminal Writ Petition No.1362/2005 decided on September 19, 2005.** That was a case in which this court came to the conclusion from the facts of that case that there was cogent material sufficient for grant of bail. The accused then had surrendered on his own and this court upheld the apprehension of the detaining authority that he was likely to be enlarged on bail. We are of the opinion that the facts of that case and the facts of the present case are different and distinguishable.

10. In the result, we find that the impugned detention order is liable to be quashed and is hereby

quashed and set aside. Detenu be released forthwith.

11. Petition is allowed. Rule is made absolute.

(D.G.DESHPANDE,J)

Dt.27.06.2006

(S.A. BOBDE, J)

.....